S.B.Civil Second Appeal No.292/2005.

Smt. Durga Devi
vs.
Badri Narain.

Date : 01.03.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Harish Purohit, for the appellant.

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REPORTABLE

Heard learned counsel for the appellant.

The plaintiffs filed a suit for possession of a small piece of land which is in the form of Chabutri. The appellant-plaintiff's case is that the said Chabutri is covered by Patta dated 16.8.1915 whereas the defendant's case is that his predecessor-in-title obtained a patta of said Chabutri in 1952. It is not in dispute that the defendant after obtaining permission from the Local Body raised construction of one Latrine on the said small piece of land. Suit for possession was filed after eight years of raising construction of said Chabutri by the defendant after obtaining construction permission from local body. In the suit plaintiff relied upon patta of 1915. The trial court decreed the suit of the plaintiff but the

appellate court allowed the appeal of the defendant-respondent and dismissed the suit of the plaintiff vide judgment and decree dated 7.3.2005. Hence, this second appeal.

Learned counsel for the appellant submitted that the courts below in fact failed to consider the patta of the plaintiff merely on the ground that original patta of the plaintiff is not in Court language and translation of patta in Court language has not been submitted and thereby the first appellate court committed error of law by ignoring the material piece of evidence. It is true that the document once exhibited cannot be discarded merely on the ground of it being in different language than in the Court language. Due care should have been taken by the parties; firstly by the party who tendered the document in evidence and he should have followed the procedure as provided in Rule 37 of the General Rules (Civil), 1986, secondly the other party also could have objected to admitting the document without its translation as required by the Rule 37 of the Rules of 1986. Even when both the parties did not follow the procedure, it was the duty of the Court to obtain the translation of the original document in the Court language. But once the document has been exhibited then said document cannot be rejected because of the language of document.

The document in original is the primary piece of evidence and not the translation. In General Rules (civil),1986 there is a specific provision i.e. rule 37 prescribing how the documents, which are in different language than the Court language, are to be taken on record and that requires filing of the translation of the documents. Where the parties as well as the Court failed to apply with the procedure merely on the basis of fault in procedure, the original document cannot be discarded. That defect can be cured by obtaining the translation of the document in the Court language by any of the Court even upto second appeal stage and admitted document cannot be rejected because the original document admitted in evidence is not in the Court language and one cannot loose his property because of this defect.

But in the present facts and circumstances as mentioned above even if the plaintiff had patta for the property in question even than he lost it as new patta was issued in favour of the defendant about 50 years ago in the year 1952 and the first appellate court gave other reasons for allowing the appeal of the defendant and for dismissal of the suit of the plaintiff. Substantially the findings are on question of fact and are not affected by first appellate court's objection about the language of plaintiff's patta.

In view of the above reason, looking to the totality of the facts and nature of dispute as well as the property involved, this Court is not inclined to interfere in the judgment and decree passed by the first appellate court as no substantial question of law involved in this appeal.

Consequently, this appeal is hereby dismissed.

(PRAKASH TATIA), J.

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